


MEMORANDUM

TO: Management and Fiscal Policy Committee

FROM:  Michael Faden, Senior Legislative Attorney

SUBJECT: **Worksession:** Bill 10-00, *Collective Bargaining - Police - Sergeants*

Previous Management and Fiscal Policy Committee recommendation: no recommendation on enactment. Recommend certain amendments if enacted. At a worksession on April 11 Councilmember Andrews, then lead member for personnel issues, supported enactment with amendments. Then-Councilmember Krahne opposed enactment. Committee Chair Praisner declined to state a position on the bill after hearing that two Councilmembers already had amendments which they plan to introduce when the bill is before the Council; she commented that it would have been useful to have had the amendments' language for Committee consideration. All Committee members supported certain amendments if the bill is enacted, which are described below and included in the bill on ©1-4.

Previous Council action: remand to Committee. At a legislative session on May 2, the Council discussed Bill 10-00 but did not vote on the bill or any amendments. Instead the Council returned the bill to Committee to review issues raised by Councilmembers and decide whether certain proposed amendments could be adopted consistently.

Combined amendment: After the May 2 Council session, Council staff prepared and circulated a combined amendment (see ©59-63) which attempts to incorporate and harmonize amendments offered by various Councilmembers. To reduce confusion, the Committee may want to use this amendment as your markup vehicle. This combined amendment would:

- Absorb the sergeants into the current police bargaining unit if they vote, in a secret ballot election held in October, to join that unit. If a majority of sergeants do not vote to join the existing unit, the sergeants would not have any right to bargain;
- Create a second police bargaining unit for lieutenants and captains;
- Exclude certain lieutenants and captains who hold sensitive positions from the bargaining unit, but not exclude any sergeants; and
- Exclude effects bargaining from the scope of bargaining for the sergeants in the current bargaining unit as well as the new lieutenant/captain unit.

One further amendment the Committee could consider is to allow the sergeants to vote on several options for representation, rather than the single option in this amendment. Those options could include:

- Inclusion in the current bargaining unit;
- A stand-alone bargaining unit;
- A supervisors' bargaining unit, including sergeants, lieutenants, and captains, or only sergeants and lieutenants.

If either of the latter two are chosen, the new bargaining unit would then hold another election to select a bargaining agent.

Background/Summary

Bill 10-00, Collective Bargaining - Police - Sergeants, sponsored by Councilmembers Berlage, Andrews, Leggett, Silverman, and Ewing, was introduced on March 14, 2000. Bill 10-00 would bring police sergeants within the scope of collective bargaining in a separate bargaining unit. The bill is titled and was advertised broadly so that the Council may consider other changes to the police and fire collective bargaining processes (see advertisement, ©6).

At the public hearing, held on April 4, Police Chief Charles Moose urged adoption of the amendments submitted by the County Executive (see Executive memo and amendments, ©7-11). Walter Bader, President of Montgomery County Lodge 35, Fraternal Order of Police (FOP), and three police sergeants urged that the bill be amended to allow the sergeants to vote whether to include themselves in the current police bargaining unit, rather than create a separate unit (see testimony, ©12-22). Mr. Bader's testimony on ©13-14 offers a detailed history of attempts to gain collective bargaining representation for County police sergeants. For a further statement of FOP's position, see their April letter on ©32.

Issues/Committee Amendments

1) Right to bargain: Should police sergeants be able to bargain collectively?

Bill 10-00 extends collective bargaining to sergeants, who are first-line supervisors. Under all of the current County collective bargaining laws (police, fire, general County employees), supervisors are not included in any bargaining unit.¹ If police sergeants are given collective bargaining rights, fire lieutenants and County government middle management are likely to seek similar treatment.

On the merits, *any* group of employees (except the highest management ranks) has a strong argument for gaining the right to bargain collectively to have a mechanism for management to recognize and respond to their unique problems. (County policy has traditionally

¹See the definition of "employee" in Code §33-102(4) for County employees, especially §33-102(4)(S), which defines and excludes "supervisors"; the definition of "employee" in Code §33-148(4) for firefighters, which excludes Fire/Rescue Lieutenants and higher ranks.

been to pass through wage and benefit settlements to unrepresented employees, so supervisors' primary need for collective bargaining is not economic.) The central question then becomes: at what level of management is collective bargaining inappropriate because of the fundamental difference of roles between managers and line employees? In the police context, the County Executive in his proposed amendments supported some form of collective bargaining for police management employees, but not for sergeants alone, implicitly answering this question broadly.

Councilmember Andrews supported the extension of collective bargaining to police sergeants. Then-Councilmember Krahne opposed it. Committee Chair Praisner reserved judgment on this issue.

2) Nature of bargaining unit: What kind of bargaining unit should sergeants be placed in?

If police sergeants are covered by collective bargaining, what bargaining unit is most suitable? The following options have been proposed:

Sergeants only unit As introduced, Bill 10-00 establishes a sergeants-only unit in addition to the current bargaining unit, which includes ranks up to master police officer as well as police trainees. The Executive and Police Chief objected to this limited unit. Under this approach, unit members would elect a bargaining agent, which could be the bargaining agent for the current unit (the FOP) or a different agent. (Council staff was told that some jurisdictions prohibit the same bargaining agent from representing both supervisors and supervisees, but has not found an example of this restriction. However, the current County personnel regulations (§29-1), which does not apply to a bargaining unit, prohibit a supervisor from being represented in a grievance proceeding by a labor organization that represents employees that the supervisor supervises.)

"Rank and file" unit The FOP and 3 individual police sergeants, in their testimony, urged that the sergeants be given the opportunity to vote for representation or no representation for collective bargaining purposes and, if representation were approved, they would automatically be included in the current bargaining unit.² For the rationale for this option, see Sgt. Holub's testimony on ©15-17; he particularly emphasized the need for a single collective bargaining agreement, or at least the need to avoid inconsistent agreements. This structure has been criticized because it places the first-line supervisors, who administer discipline and otherwise direct employee conduct, in the same unit as those they direct. For a response to this criticism, see Sgt. Sugrue's testimony on ©18-19. See also the latest FOP letter on ©32.

Management unit The County Executive, in his amendments, proposed a management unit composed of sergeants, lieutenants, and captains. (For the Executive's rationale, see OHR memo on ©23-25. For bargaining unit structures in other area jurisdictions, see OHR table on ©26.) Mr. Bader characterized this as a "company union". After surveying the sergeants, the Alliance of Police Supervisors (see letter, ©22) reported that 60% of the sergeants who

²Sgt. Holub proposed that a representation election be conducted each time the collective bargaining agreement expires. This would be inconsistent with the existing law, which only requires an election when 30% of the employees petition to decertify the current representative. See Code §33-79(a)(2).

responded wanted the Alliance to represent them, presumably in a broader bargaining unit. FOP disputes this; see letter on ©32.

Separate management units Councilmember Berlage, lead sponsor of Bill 10-00, still supports the bill as introduced but would extend collective bargaining to police lieutenants and captains by creating a third bargaining unit for them, not including sergeants. (See Councilmember Berlage's memo, ©28.)

Councilmember Andrews supported creating a sergeants-only unit. Then-Councilmember Krahne supported including sergeants in a broader supervisors unit if a new unit is created. Committee Chair Praisner reserved judgment on this issue.

3) Scope of bargaining unit: If a management unit is created, who should be excluded from it?

After proposing a broader management unit, the Executive's amendments on ©9, lines 13-20, list those management personnel who should *not* be in any bargaining unit: employees above the rank of captain, and those captains and lieutenants whose primary duties involve sensitive issues such as labor relations, personnel, internal affairs, legal issues, and policy development. **If a management unit is created, the Committee unanimously concurred with this list of excluded employees;** see ©2, lines 12-14 (this provision will finally be drafted to cover whatever ranks are ultimately included in a new bargaining unit).

4) Scope of bargaining: Should effects bargaining be extended to a sergeants or management bargaining unit?

Employees in the current police bargaining unit, *but no other County collective bargaining unit*, can bargain the effect of the employer's exercise of the rights reserved to the employer (commonly termed "management rights").³ This provision is generally known as "effects bargaining". (See Code §33-80(b) on ©28 for the list of 10 categories of management rights subject to effects bargaining.)

The Executive's amendments (see ©11) would expressly restrict effects bargaining to the current "rank and file" unit.⁴ For the Executive's reasons why the supervisors' unit should not have effects bargaining, see the OHR memo on ©25. Council staff generally concurs with this rationale. Councilmembers may recall that the Office of Legislative Oversight, in OLO Report 99-2 on the Police Department's Complaint Handling System, recommended that the Council "look at how the 'effects bargaining' provision in the (police labor relations) law has, in practice, affected police management's ability to manage conduct issues."⁵ The Police Department's

³The County government employees' bargaining law (Code §33-107(a)(7)) and the firefighters' bargaining law (Code §33-152(a)(7)) both give employees the right to bargain "amelioration of the effect on employees when the exercise of employer rights...causes a loss of existing jobs in the unit." This is a much narrower provision than the one in the police bargaining law.

⁴Although the Executive did not propose it, the bill was advertised broadly enough to allow the Council to modify or repeal effects bargaining as it applies to the current bargaining unit as well as any new unit.

⁵Recommendation #5, page 93. See also OLO's finding #3 on page 65 regarding "the need to proactively manage officer conduct and promote accountability, rather than rely solely on disciplinary measures."

response⁶ expressed the Department's concern about the impact of effects bargaining "on its ability to govern employee conduct and manage discipline issues...Effects bargaining renders (timely steps to remedy shortcomings) very difficult if not impossible...management's ability to lead the Department and ensure proper conduct has been eroded."

Not surprisingly, the FOP fundamentally disagrees on this issue. See FOP June letter on ©51-58. They also argue that members of the same bargaining unit should not bargain under different rules. OHR agrees with that point, but would instead conclude that the sergeants should thus be placed in a different bargaining unit.

Among the effects bargaining options available are to either allow or not allow any new unit the right to effects bargaining, or to permit effects bargaining on only certain management rights. In Council staff's view, the most questionable management rights subject to effects bargaining may be paragraphs (4), (5), and (9), although the Police Department may cite others that have caused past problems.

The Committee unanimously decided that effects bargaining would not apply to any new police bargaining unit.

This packet contains:	<u>Circle #</u>
Bill 10-00 with Committee amendments	1
Legislative Request Report	5
Advertisement for public hearing	6
Memo from County Executive with proposed amendments	7
Testimony from public hearing	12
Letter from Alliance of Police Supervisors	22
Memo from OHR responding to hearing testimony	23
Scope of collective bargaining -- excerpt from current law	27
Memo from Councilmember Berlage suggesting amendment	28
OMB fiscal impact statement	29
Letter from FOP (April 27, 2000)	32
Letter from FOP (June 2, 2000) without attachments	51
Combined amendment	59

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⁶See page 10-11 of attachment to Chief Administrative Officer's memo in OLO report.

Bill No. 10-00
Concerning: Collective Bargaining -
Police - Sergeants
Revised: 4-28-00 Draft No. 2
Introduced: March 14, 2000
Expires: September 14, 2001
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Berlage, Andrews, Leggett, Silverman, and Ewing

AN ACT to:

- (1) bring police sergeants within the scope of collective bargaining;
- (2) divide the police collective bargaining unit into two bargaining units; and
- (3) generally amend the law regarding collective bargaining with County police officers.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resource
Sections 33-76, ~~[[and]]~~ 33-78, and 33-80

By adding

Chapter 33, Personnel and Human Resource
Section 33-78A

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

①

Sec. 1. Sections 33-76, [[and]] 33-78, and 33-80 are amended, and Section

33-78A is added, as follows:

33-76. Definitions.

When used in this Article:

* * *

Certified representative means an employee organization selected in accordance with [the procedures of] this Chapter to represent [the] a unit.

Employee means any police officer [in the classification of] classified as a sergeant, master police officer I, master police officer II, police officer I, police officer II, police officer III, [and] or police officer candidate, or an equivalent nonsupervisory classification[s], but not [those] a police officer in [the classification of police sergeant or] any [equivalent or] higher classification. Employee does not include a sergeant whose primary duties involve human resources, internal affairs, legal matters, labor relations, or policy development and compliance.

Employer means the County Executive and [his] the Executive's designees.

* * *

Unit means [all employees] either of the units defined in Section 33-78A.

33-78. Employee rights.

* * *

(b) The employer [shall have the duty to] must extend to the certified representative the exclusive right to represent the employees in that bargaining unit for the purposes of collective bargaining, including the orderly processing and settlement of grievances as agreed by the parties.

(c) A certified representative [shall] must serve as the bargaining agent for all employees in the unit for which it is certified and [shall have the duty to] must represent fairly and without discrimination all employees in that unit without regard to whether the employees are [or are not] members of the employee organization, [or are paying] pay dues or other contributions to it, or [participating] participate in its affairs. [; provided, however, that it shall not be deemed] However, it is not a violation of this duty for a certified representative to seek enforcement of an agency shop provision in a valid collective bargaining agreement.

* * *

33-78A. Bargaining units.

For purposes of certification and collective bargaining, employees subject to this Article must be divided into 2 bargaining units, composed of the following employees:

(1) sergeants;

(2) all other covered employees.

33-80. Collective Bargaining.

(a) **Duty to bargain; matters subject to bargaining.** [[Upon certification of an]] A certified employee organization[[, as provided in section 33-79,]] and the employer [[and the said certified representative shall have the duty, through their designees, to]] must bargain collectively [[with respect to those]] on the following subjects [[as follows]]:

* * *

(7) The effect on employees of the employer's exercise of rights [[enumerated]] listed in subsection (b) [[hereof]], but this paragraph does not apply to the bargaining unit composed of sergeants.

* * *

Approved:

Michael L. Subin, President, County Council

Date

Approved:

Douglas M. Duncan, County Executive

Date

This is a correct copy of Council action.

Mary A. Edgar, CMC, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Bill 10-00

Collective Bargaining - Police - Sergeants

DESCRIPTION: Adds sergeants to the list of Police Department employees subject to collective bargaining. Creates a second police bargaining unit for sergeants.

PROBLEM: Police sergeants do not have collective bargaining rights, unlike all ranks below them, but also are not treated as upper management.

GOALS AND OBJECTIVES: To give police sergeants full collective bargaining rights, in a separate bargaining unit.

COORDINATION: Police Department, Office of Human Resources

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Michael Faden, Senior Legislative Attorney, 240-777-7905

APPLICATION WITHIN MUNICIPALITIES: Applies only to County Police Department..

PENALTIES: Not applicable

REQUEST FOR ADVERTISING

Ad No. 3745

From: Office of the Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

PLEASE INSERT THE FOLLOWING ADVERTISEMENT IN THE LEGAL CLASSIFIED
SECTION OF THE FOLLOWING NEWSPAPER(S) ON THE DATE INDICATED:

Journal –Friday, March 17 and 24, 2000

ORDER AD W/2 PT. RULE

7 pt. bf. MONTGOMERY COUNTY
COUNCIL
8 pt. bf. PUBLIC HEARINGS
#

[SEAL]

7 pt. bf.
body copy
7 pt.

April 11, 2000 – 1:30 P.M.

(1) **Bill 9-00** would authorize the planning, design, renovation and construction of the Parking Bethesda Del. Ray/Auburn Garage No. 36, Project No. 509930, in the Bethesda-Chevy Chase Policy area.

April 4, 2000 – 1:30 P.M.

(2) **Bill 10-00** would bring police sergeants within the scope of collective bargaining; divide the police collective bargaining unit into two bargaining units; and generally amend the law regarding collective bargaining with County police officers. The Council may consider other amendments to the collective bargaining process for County police officers and firefighters, including amendments that affect the scope of the bargaining units and the items that are subject to bargaining.

7 pt. bf. The hearings will be held in the Council Office Building, 100 Maryland Avenue, Rockville. To testify or to obtain copies call the Council Office at (240)777-7931. If persons with disabilities need any services or aids to participate in this activity, please call the Council Office at (240)777-7931 seven days in advance (TTY (240)777-7914).

XX

Prepared by: _____

Approved by: _____

Final Approval: _____

County Attorney: _____

10-00



RECEIVED COUNCIL

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

20 APR 3

PI2 : 18

MF
CC
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ME

Douglas M. Duncan
County Executive

MEMORANDUM

April 3, 2000

031109

TO: Michael L. Subin, President
Montgomery County Council

FROM: Douglas M. Duncan, County Executive

SUBJECT: Bill No. 10-00, Collective Bargaining for Police Sergeants

I support the efforts of Councilmembers Berlage, Andrews, Leggett, Silverman, and Ewing in proposing legislation to extend collective bargaining rights to police sergeants. For some time now, police supervisors have expressed an interest in having a more active role in determining what their salaries, benefits, hours of work, and other working conditions will be. In response to their wishes and in consultation with the Chief of Police, I am requesting that Bill No. 10-00 be amended to provide collective bargaining rights to police lieutenants and captains in addition to sergeants.

I endorse the view of the sponsors of the bill that there should be a separate bargaining unit for police supervisors. This will insure that the identity of police sergeants, lieutenants, and captains as supervisors is maintained in the collective bargaining process. I also propose an amendment that would reserve to the unit of non-supervisory police officers the right to bargain over the effect of the exercise of a management right. I believe that we should not have to bargain with police supervisors over the impact of management decisions effecting supervisory employees.

I have attached a copy of Bill No. 10-00 with the amendments. I thank the Council for considering this request.

DMD:cmr

Attachments

Bill No. 10-00
Concerning: Collective Bargaining –
Police - ~~[[Sergeants]] Supervisors~~
Revised: _____ Draft No. _____
Introduced: _____
Expires: _____
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Berlage, Andrews, Leggett, Silverman, and Ewing

AN ACT to:

- (1) bring police sergeants, lieutenants, and captains within the scope of collective bargaining;
- (2) divide the police collective bargaining unit into two bargaining units; ~~[[and]]~~
- (3) limit the scope of bargaining for the police supervisors bargaining unit; and
- ~~[[3]]~~
- (4) generally amend the law regarding collective bargaining with County police officers.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-76, ~~[[and]]~~ 33-78, and 33-80

By adding

Chapter 33, Personnel and Human Resources
Section 33-78A

Boldface	<i>Heading or defined term.</i>
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<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 33-76, ~~[[and]]~~ 33-78, and 33-80 are amended, and
Section 33-78A is added, as follows:

33-76. Definitions.

When used in this Article:

* * *

Certified representative means an **employee** organization selected ~~[[in~~
accordance with the procedures of]] under this Chapter to represent ~~[the]~~ a **unit**.

Employee means ~~[[any]]~~ a police officer ~~[in the classification of]~~ classified
as a captain, lieutenant, sergeant, master police officer[[I, master police officer
II]], police officer I, police officer II, police officer III, [and] ~~[[or]]~~ police officer
candidate, or an equivalent ~~[[nonsupervisory classification[s], but not [those] a~~
police officer in ~~[the classification of police sergeant or] any [equivalent] or~~
higher]] classification. Employee does not include an individual in a position
classified higher than a police captain or a police lieutenant or captain assigned to
one of the following work units and whose primary duties involve:

- (a) Human resources;
- (b) Internal affairs;
- (c) Legal;
- (d) Labor relations; or
- (e) Policy development and compliance

Employer means the County Executive and ~~[his]~~ the Executive's designees.

* * *

Unit means ~~[all employees]~~ either of the bargaining units defined in
Section 33-78A.

33-78. Employee rights.

* * *

(b) The **employer** [shall have the duty to] must extend to the **certified representative** the exclusive right to represent the **employees** in that bargaining unit for the purposes of collective bargaining, including the orderly processing and settlement of grievances as agreed by the parties.

(c) A certified representative [shall] must serve as the bargaining agent for all **employees** in the unit for which it is certified and [shall have the duty to] must represent fairly and without discrimination all **employees** in that unit without regard to whether the **employees** are [or are not] members of the **employee** organization, [or are paying] pay dues or other contributions to it, or [participating] participate in its affairs. [; provided, however, that it shall not be deemed] However, it is not a violation of this duty for a **certified representative** to seek enforcement of an agency shop provision in a valid collective bargaining agreement.

* * *

33-78A. Bargaining units.

For purposes of certification and collective bargaining, ~~[[employees]]~~ an employee subject to this Article must be ~~[[divided into 2 bargaining units, composed of the following employees]]~~ a member of one of the following bargaining units:

(a) ~~[[sergeants]]~~ police supervisors **unit** that includes police sergeants, lieutenants, and captains; or

(b) police non-supervisors **unit** that includes all other covered employees.

33-80. Collective bargaining.

(a) **Duty to bargain; matters subject to bargaining.** [[Upon certification of an]] An **employee** organization[[, as provided in]]

certified under Section 33-79[[, the **employer** and the said **certified**
representative shall have the duty, through their designees, to]] and
the **employer** must bargain collectively [[with respect to those]] on
the following subjects [[as follows]]:

* * *

(7) [[the effect on **employees** of the **employer's** exercise of rights
enumerated in subsection (b) hereof]] the effect of the
employer's exercise of **employer** rights listed in subsection (c)
with the **certified representative** of the police non-supervisors
bargaining **unit**. The **employer** must not bargain collectively on
the effect of the **employer's** exercise of **employer** rights listed
in subsection (c) with the **certified representative** of the police
supervisors bargaining **unit**.

* * *

Approved:

Michael L. Subin, President, County Council

Date

Douglas M. Duncan, County Executive

Date

This is a correct copy of Council action.

Mary A. Edgar, CMC, Clerk of the Council

Date



Montgomery County Lodge 35, Inc.

MONTGOMERY COUNTY COUNCIL

**TESTIMONY OF FRATERNAL ORDER OF POLICE,
MONTGOMERY COUNTY LODGE 35, INC.
CONCERNING BILL No. 10-00
COLLECTIVE BARGAINING - POLICE SERGEANTS**

April 4, 2000

Good Afternoon. I am Walter E. Bader, President, Fraternal Order of Police, Montgomery County Lodge 35 and am here to testify in support of Bill 10-00 with amendments.

Before you is a proposal to allow sergeants to bargain collectively. Unlike many of their counterparts in other jurisdictions, including neighboring Prince George's County and Washington, DC. Montgomery County sergeants do not have this right.

What we strongly urge is that sergeants included in the current law with a special provision that, as a sub-unit, they be allowed to vote for either union representation or no union representation. If they vote for union representation, we believe that they should be in the existing bargaining unit. If they are in the same unit, as we propose, they should have the right to vote in any representation election. Kirk Holub will give you reasons.

Lodge 35 does not want a legislated right to represent sergeants. We want them to have the opportunity to decide whether any union will represent them and if they vote for union representation, they would, under existing law, have the right to vote in any subsequent union representation election.

It is essential that it be made clear that the right to bargain collectively is not the same as the right to representation. While collective bargaining involves union representation, a union may represent its members, including sergeants, even without collective bargaining. Employees have a right to representation under several sources of law, including the United States and Maryland Constitutions in some matters, Maryland law in other matters, and the Merit System Law.

Simply defined, collective bargaining is a continuous relationship between a group of employees and their employer. The employees elect their own representative in a democratic manner. Once elected and certified, the representative negotiates and administers a contract setting forth wages, benefits, and other terms and conditions of employment.

18512 Office Park Drive Montgomery Village, MD 20886

(301) 948-4286 • FAX (301) 590-0317



12

Collective bargaining is not new. It has been with us for over a century. Contracts have been with us long before the creation of this Nation. Indeed, the United States Constitution protects private contracts from government impairment. Yet, for some irrational reason, the concept of union contracts is a causes of controversy.

In 1980, under the leadership of President Larry Desmond, a Montgomery County police sergeant, members of FOP Lodge 35 twice obtained the necessary signatures to put the issue of collective bargaining to referendum. The voters of Montgomery County overwhelmingly approved a citizen initiative granting police officers the right to collective bargaining with binding arbitration. Enabling legislation was enacted in April 1982. Sergeants were excluded, primarily because they had been excluded under the 1976 meet and confer law.

Meet and confer resulted in three agreements or "Position Papers." And, although the bargaining unit consisted of only officers below the rank of sergeant, in 1980 when Sergeant Larry Desmond was elected President, the County and police department recognized his role and position and he was afforded administrative leave to conduct union business under the provisions of "Position Paper III."

While sergeants do not have collective bargaining rights, many currently are, and in the past, have been represented by FOP Lodge 35. Since 1969 when FOP Lodge 35 was chartered, we have represented numerous sergeants in grievances and appeals, hearing boards, matters before the Grand Jury, at the scenes of police shootings, and other matters. At practically any given time, we are representing one or more supervisors. We do not, however, provide this representation with bargaining unit fees or dues, and carefully segregate our finances as required by the United States Supreme Court.

After the current police labor relations law was passed, dues for sergeants were deducted during the first two collectively bargained agreements - 1983-85 and 1985-88. Then, suddenly when negotiations commenced for a new agreement, the County first threatened, then filed, but later withdrew, a Charge of Prohibited Labor Practice because we were representing sergeants. What brought this about was that the County hired a labor relations manager who had worked for the union that challenged Lodge 35 for representation rights under meet and confer. That individual decided that he could make an issue of our representation of sergeants and he did. In discussing this matter with former Chief Bernie Crooke, I was told that he had no advance knowledge of the action and that he had no problem with our representation of police sergeants. At that point, he was speaking with five years of experience as police chief.

Considerable litigation and dispute ensued. In the end, the County unilaterally discontinued voluntary dues deductions for non-unit police officers and the grievance procedure [AP 4-4] was amended to prohibit either Lodge 35 or its President from representing sergeants in grievances. We have since resolved this issue to some degree.

None of this came as a real surprise, because in 1985, the County Attorney, despite a contract provision against it, unsuccessfully caused a suit to go to the Maryland Court of Special Appeals challenging my right to represent a Police Officer III before the Merit System Protection Board. Though we prevailed, the lesson learned was that as of 1985, Montgomery County remained anti-union.

FOP Lodge 35
Bill 1-00
April 4, 2000

Page Three

On three occasions since 1982, a majority of sergeants have signed petitions with Lodge 35 for full collective bargaining rights.

Our bargaining unit members work with sergeants and perform much of the same work under identical conditions. Sergeants are the only unrepresented group of employees who share our working conditions. They should participate in the negotiation of contracts to address our concerns and in the administration of those contracts within a democratic union.

Now the Duncan Administration which for over five years has not supported collective bargaining rights for sergeants, suddenly proposes that sergeants, lieutenants, and captains should have these rights. Clearly, this is not an initiative, but a very shallow response to this bill and a 20 year effort by sergeants to obtain collective bargaining rights.

This is a ploy conceived only after the department got an earlier draft of this bill. Their plan is to expand bargaining to a larger group of employees, create a new unit, and have the unit be represented by a company union.

This attempt to create a company union demonstrates a disrespect for employees' right to organize and is regressive. This is a sad commentary on the administration. Seeking a company union a century after most such unions were abolished in this country is outrageous. They have them in Mexico, in third world countries, and some chicken producers might like to bring them back. Yet, in the year 2000 the Duncan administration seeks one and asks you to help them do it. The only thing they haven't yet proposed is the company store.

The administration has taken the reactionary, short view. The long term effect of their intent would be to drive a wedge between the bargaining unit and sergeants. Sergeants and current unit members must work together. We depend upon each other for mutual protection and safety. Indeed, their lives depend upon one another.

We ask that you reject the administration's proposal and enact support legislation to give sergeants the right to bargain as we propose.

Finally, we notice that this hearing has been advertised rather broadly. While we are here this day supporting our sergeants, we vigorously oppose any attempt to diminish our existing rights under the existing Police Labor Relations Law and would like fair opportunity to address any proposal to do so.

We are available to provide any information or assistance that any councilmember may desire.

Thank you for your careful consideration of this bill and the amendment we propose.

3

FRATERNAL ORDER OF POLICE
Montgomery County Lodge 35, Inc.



Supervisors Committee

18512 Office Park Drive
Gaithersburg, Maryland 20879
Phone (301) 948-4286 Fax (301) 590-0317

BEFORE THE MONTGOMERY COUNTY COUNCIL
TESTIMONY OF KIRK HOLUB, CHAIR, SUPERVISORS COMMITTEE,
FRATERNAL ORDER OF POLICE, MONTGOMERY COUNTY LODGE 35

Bill 10-00

April 4, 2000

Good afternoon. I am Kirk Holub, a police sergeant and Chairman of the FOP Lodge 35 Supervisors Committee. Lodge 35 is also the elected representative of nonsupervisory police officers.

The Lodge 35 Supervisors Committee is a functional unit of Lodge 35 and was first created in 1982, then rechartered in 1996 for three basic purposes: 1. To recognize the importance of supervisors within the FOP; 2. To coordinate FOP representation of police supervisors; and 3. To pursue collective bargaining rights for police sergeants.

Currently, 91 (87%) of 105 sergeants are active dues-paying members of FOP Lodge 35. Of these sergeants, excluding the Supervisors Committee, one is on our Board of Directors, one is treasurer of a committee, one is a steward, and one is a committee member. Since the 1980 Charter amendment requiring collective bargaining for police officers, sergeants have served as President, Vice-President, Treasurer, and in other Lodge positions.

Lodge 35 has represented sergeants in employment matters since 1969. In the past year alone, we have represented sergeants in internal affairs matters under the Law Enforcement Officers' Bill of Rights, and others in grievances. A case involving a sergeant is pending before the Court of Special Appeals.

During recent negotiations with the Department of Justice, Lodge 35 protected the interests of police sergeants and allowed non-represented officers, of all ranks, to vote during the ratification process. The agreement was accepted and litigation, as is occurring in Columbus, Ohio and Pittsburgh was avoided.

Lodge 35 has a history of representation of sergeants. Significantly, there is no history of conflict.

We strongly urge that sergeants be allowed, according to procedures that we will outline, to vote for either representation or no representation. If we vote for representation, we believe that sergeants should be in the existing bargaining unit. There are several reasons for this.

1. We have a community of interest with the existing unit;
2. We are the only unrepresented sworn employees who have identical working conditions to existing unit members;
3. Like the bargaining unit, many of us work shift work;
4. We share the same job risks and dangers as existing unit members;
5. We perform much of the same work as unit members, e.g. making arrests, issuing traffic citations, responding to emergencies, and patrolling neighborhoods.
6. The nature of our job requires a certain closeness and ability to think and respond like others engaged in the same activities, often under dangerous circumstances;
7. We are subject to the same operating procedures as the existing unit.

It is for most of these reasons that, in other jurisdictions, first-line supervisors, such as sergeants, have traditionally been included in the same unit as non-supervisory officers.

Our primary goal is to serve our community on the front-lines and to protect life and property. We do our jobs well by working with those we supervise.

Talk of conflict and concern that there is a need to segregate supervisors from those they supervise defies history, tradition, and the realities of police work. If there is anything to fear, it is perpetuation of the theory that a government employer should drive a wedge between people who the community rely upon to protect their lives and property.

When a person is trapped in a car, we work together to save a life. When a suspect pulls a gun on a police officer, we do not concern ourselves with rank. When a citizen is in need of immediate police assistance, we don't pause to consult. We work together and we get the job done.

In our personal lives, we have close friends who are unit members. Non-represented employees are married to represented officers.

From a bargaining perspective, a unit of 105 officers is relatively small. If segregated by statute, we would be forced to bargain our interests without consideration of the existing unit members' interests and *vice versa*. Instead of working together through bargaining as we work together on the street, we would be forced to work against each other. This is not in the public's best interest.

Moreover, the County would have to negotiate with an additional union. And, if bargaining came to impasse, arbitration could produce very different results. For instance, supervisors could end up with a larger pay increase than those they supervise. This would destroy morale.

The Maryland police departments that have two units for supervisors and non-supervisory officers are Baltimore City which has an officers unit and a sergeants and lieutenants unit, both represented by the same FOP; and Anne Arundel County which has two units, represented by two different unions. Neither Baltimore City nor A.A. County have binding arbitration. A.A. County has had considerable internal chaos. In contrast, Prince George's County where there is binding arbitration, has one unit that includes non-supervisory employees, sergeants and lieutenants. Upon impasse in P.G. County, there is one arbitration, and one result.

In closing, we support collective bargaining with binding arbitration for police sergeants under the same law that currently exists for non-supervisory police officers. Many sergeants are now represented individually by the same union that represents other officers.

We ask that the bill be amended and passed to allow sergeants to vote for representation in August of each year immediately preceding expiration of a contract. If sergeants vote for representation, we would be included in the same unit as non-supervisory officers and accorded full rights under existing certification procedures. If we vote no representation, we would be excluded.

We feel that this is a reasonable compromise proposal that takes into account the major concerns we have heard.

We look forward to working with you in this important matter.

Statement in Support of Bill 10-00

Collective Bargaining for Police Sergeants

My name is Fergus Sugrue. I also am a Montgomery County police sergeant and a member of FOP Montgomery County Lodge 35.

I join Sergeants Holub and Hamill in supporting Bill 10-00 with the amendment they propose.

In 1980, the voters of Montgomery County gave police officers the right to collective bargaining with binding arbitration. When the law was passed, we were excluded. The time has come for us to be afforded this important right within the same bargaining unit as the only other group of employees who work under identical conditions as do we.

I, too, will address the apparent concern of conflict. There should be less concern over imaginary conflict and more concern about potential divisiveness. In Prince George's County and Washington, D.C., the only area jurisdictions with collective bargaining and binding arbitration, sergeants are included in the police bargaining unit under one contract with non-supervisory police officers.

I see no conflict if an organization that represents non-supervisory police officers also represents first-line supervisors at the bargaining table, especially when that bargaining committee includes first-line supervisors.

As sergeants, we are now caught in the middle between management and unit police officers. It would seem to me that there would be less conflict if sergeants and non-supervisory police officers could sit at the bargaining table and work out potential problems and memorialize solutions in a collective bargaining agreement.

Currently, FOP Lodge 35 represents most sergeants under the Law Enforcement Officers' Bill of Rights and the County's own grievance procedure. Collective bargaining with one bargaining unit would merely result in a comprehensive contract with uniform, formalized rights, conditions, and responsibilities under the same agreement with uniform conflict resolution procedures.

Any responsible representative of police officers, like Lodge 35, will avoid against conflict. Lodge 35 has been very successful in doing just that.

As police officers, we are faced with far more serious conflicts and we have a record of resolving them. In our private lives, we deal with neighborhood problems that call upon balancing our private and professional responsibilities; we have personal family interests that can test us; or we could stop a friend, relative, or political official for a traffic offense.

Should some future police chief be suspected of criminal activity, I have every confidence in my brother and sister officers to enforce the law.

Non-supervisory police officers investigate internal complaints against non-supervisory officers and sergeants. Sergeants investigate complaints against sergeants and lieutenants. Friends and relatives of officers supervise investigations of other officers as well as those of friends and relatives of officers, yet there has never been any a concern because we are professional in our dealings.

The County Attorney's office "prosecutes" police officers, including, sergeants, at administrative hearings, and defends the same officers in civil cases arising from the same incident, but no one complains of conflict.

In contrast, collective bargaining must be viewed in the employer-employee context, not the criminal context. I would think there is less potential for conflict if the parties are accorded the opportunity to present their interests at the table.

The public and government interests of Montgomery County and its sergeants (first-line supervisors) would be well served through legislation as we have proposed.

We ask for your support.

Bill 10-00

Collective Bargaining for Police Sergeants

Good afternoon. I am Russell E. Hamill, III and am a Montgomery County police sergeant, a member of FOP Montgomery County Lodge 35, and an attorney admitted to the Maryland Bar. My wife is a member of the police collective bargaining unit.

I support collective bargaining for police sergeants with a provision that we vote for representation or no representation. And that when represented, we be represented by the same union that represents non-supervisory officers.

Typically, opponents will say that representation by the same union creates conflicts. In our case, I disagree. I will explain the process and facts to put the issue in its proper perspective.

When I began my employment in Montgomery County, I was a member of the police bargaining unit. In 1994 when I was promoted to sergeant, I remained an active member of FOP Lodge 35, but was no longer a member of the bargaining unit.

Promotion meant that I was no longer covered by the collective bargaining agreement, but I remained a merit system employee covered by Personnel Regulations. In essence, I traded a book called "Collective Bargaining Agreement" for another book entitled "Personnel Regulations for Merit System Employees".

The contract was negotiated between the County and my elected representative in a business-like manner under law. The Personnel Regulations were implemented through government processes. In effect, the Personnel Regulations became my contract.

Both the collective bargaining agreement and the contract have grievance procedures. Currently, when a unit member has a grievance, s/he notifies the FOP. Similarly, when a sergeant has a grievance, s/he usually contacts the FOP.

Under the contract grievance procedure, immediate supervisors do not adjust grievances. However, under the County's own grievance procedure, which is available to current bargaining unit members in some situations, supervisors can resolve grievances. Hence, there is less potential for conflict under the contract than under the County's own unilaterally implemented grievance procedure.

Representation during disciplinary interviews is governed by state law and, in most cases, the FOP represents sergeants in procedures under this law. Workers' Compensation is governed by state law and many sergeants use FOP endorsed attorneys for those hearings.

All police-involved shootings are reviewed by the Grand Jury. Under the Constitution, even the innocent have a right to representation in these matters. Most sergeants call upon the FOP for such representation.

Typically, conflict is perceived to occur through contract administration, not contract negotiation.

I have not seen any conflict with FOP representation and know that we, supervisory and non-supervisory officers alike, are professional enough to prevent conflict from interfering with our jobs. The FOP is an organization of police officers and has been very responsible and professional in avoiding conflict.

Policing is different than most other occupations and professions. We are a brother and sisterhood of citizens dedicated to preservation of community peace and security. This is a tough job, but we can do it only through unity without artificial government-created barriers.

Next month, the National FOP will host annual ceremonies honoring all law enforcement officers who have died in service to their communities. New names will be added to the National Law Enforcement Officers' Memorial in D.C.

This Council owes it to its law enforcement officers to visit that memorial. There you will see that heroes' names are not segregated by bargaining unit or rank.

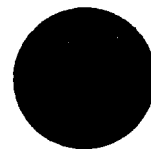
You support for the bill with the proposed amendments will be appreciated.

ALLIANCE OF POLICE SUPERVISORS

P.O. Box 1036, Germantown, Maryland 20875

RECEIVED
MAR 22 4 9:56

March 16, 2000



NAC
CC
L Am?

Mr. Derick Berlage
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

J30295

Dear Mr. Berlage:

The issue of Collective Bargaining for the rank of Sergeant for the Montgomery County Police has recently resurfaced with Legislation that you have presented. The Alliance of Police Supervisors strongly supports Collective Bargaining for Sergeants, Lieutenants and Captains represented by our organization. Chief Moose is also in support of this unified proposal.

The Alliance of Police Supervisors distributed a questionnaire on April 16, 1998 to supervisors of the rank of Sergeant to determine their interest in having one of the following:

- Interest in the Alliance of Police Supervisors representing Sergeants, Lieutenants and Captains to attain Collective Bargaining
- Sergeants should have their own bargaining unit or join an existing bargaining unit to attain Collective Bargaining

The results of this survey indicated that 60% of the Sergeants wanted the Alliance of Police Supervisors to represent them.

We request that you extend your legislation to include Lieutenants and Captains. It is important that management have a voice in their future. Historically, management has not had any input and has relied on the pass through benefits that were bargained by the Fraternal Order of Police. This fact has limited many talented officers from participating in the promotional process above the rank of Corporal. Collective Bargaining for members of the Alliance of Police Supervisors will provide representation for all of our membership and encourage officers to become supervisors. We are only interested in the advancement of our Department and keeping our agency in the forefront of law enforcement initiatives. Thank you for your attention to this matter of importance.

Sincerely,

Drew J. Tracy, President

David F. Buchanan, Vice President *DFB*

Michael E. Buchan, Treasurer *MEB*

Cc: Charles A. Moose Ph.D.
County Council Members

22



OFFICE OF HUMAN RESOURCES

Douglas M. Duncan
County Executive

Marta Brito Perez
Director

MEMORANDUM

April 7, 2000

TO: Michael Faden, Senior Legislative Attorney

VIA: Marta Brito Perez, Director, Office of Human Resources

FROM: James E. Torgesen, Labor/Employee Relations Manager *J. Torgesen*

SUBJECT: Bill No. 10-00 - Collective Bargaining -Police Supervisors

You have requested additional explanation and comments from the Executive Branch concerning the amendments affecting collective bargaining rights for police supervisors as proposed by the County Executive. The following is an explanation of the rationale for these amendments addressing the three areas affected; unit structure, position exemptions and scope of bargaining.

Unit Structure

The Police Labor Relations Law, as in each of the other County labor laws, includes as a critical component of the law the definition of a unit of representation for the purpose of collective bargaining. In determining an appropriate unit of representation, labor relations criteria that are commonly used include an evaluation of: the desires of employees, the history of representation, the extent of union organization and community of interest. While all four elements may have impact on unit determination, community of interest is of prime importance. Community of interest generally includes similarities in duties, skills and working conditions.

Desires of employees. To formulate a position on this matter, the Chief of Police met with all supervisors within the Department. Two separate meetings were held, one with sergeants and one with all other supervisors. The Chief concluded from those two meetings that employees in the ranks of sergeant, lieutenant, and captain were interested in having their wages, benefits, and working conditions established through the collective bargaining process.

History of representation. Over the years, various police organizations have represented the interests of police supervisors at all ranks. In the public testimony on the bill, the Fraternal Order of Police (FOP) emphasized its history of individual representation of sergeants. In fact, the FOP has been active in the individual representation of supervisors at all levels. Likewise, the Alliance of Police Supervisors has represented supervisors of all ranks in various capacities.

In the public testimony, the FOP contended that the structure of a separate unit including all three supervisory ranks will have the "unit be represented by a company union." The proposed amendments do nothing to alter the manner in which bargaining unit employees select their chosen representative. The FOP or any other labor organization is free to compete for the representation rights of the bargaining unit. The representative will be determined by a majority of the eligible employees voting. If unit members do not approve of the representation, the law provides a means to change the representative. To suggest that employees would somehow permit an employer-sponsored organization sorely underestimates the intelligence and desire for self determination of the employees involved.

Extent of union organization. Throughout the metropolitan area and Maryland, police supervisors have organized for the purpose of collective bargaining in a number of jurisdictions. The unit structure is mixed. Attached is a chart which provides the jurisdiction, labor organization, unit status, and ranks involved. The public testimony indicated that Prince George's County had one unit that included all police officers through lieutenant. The unit structure in Prince George's County actually provides for a separate unit for supervisors, but for bargaining purposes the supervisors are included under the same labor agreement as the non-supervisory personnel.

Community of interest. The County Executive proposed amendments create a separate supervisory bargaining unit to include sergeants, lieutenants and captains. These three ranks share a primary and common job duty: the responsibility for supervision of police employees and resources. The sergeant has day-to-day responsibility for shift supervision including assigning work, reviewing performance, approving leave, and recommending and approving training. The lieutenant is the principal supervisor of all police patrol shifts and special assignment teams. The captain is the principal supervisor of an operational unit. Included in the supervision at all levels is the responsibility for the administration and enforcement of labor agreements on behalf of the County as the employer. A separate supervisory unit preserves the identity of the supervisory structure.

Although compensation and benefits are similar to the existing police bargaining unit as the result of "pass through," supervisors have their own salary schedule. Also, although sergeants do work the same shift structure as those whom they supervise, as noted earlier their primary role is one of supervision.

Creating a separate supervisory unit also helps eliminate conflicts of interest that arise when supervisors are placed in the same unit as non-supervisory employees. Supervisors must apply the many provisions of the contract to the employees they supervise. As disagreements arise concerning the application of the contract the interests of the supervisor are blurred if they are covered by the same agreement that they are being required to enforce. For example, in a grievance proceeding, subordinate employees might expect supervisors to act more like employee advocates than representatives of management if both are part of the same unit.

The public testimony stated that the County Executive's proposed amendments are seeking to "drive a wedge" between supervisory and non-supervisory employees. The focus of

the proposed amendments is on the supervisory community of interest. It is the County's position that the proposed unit structure will further identify and preserve this important element within the Police Department.

Position Exemptions

The Executive Branch amendments seek to exempt from coverage employees who perform certain critical functions within the police department impacting labor relations. Supervisory employees in human resources, legal, labor relations, internal affairs, policy development and compliance should be excluded from the bargaining unit. Supervisory personnel in these work units are actively engaged in representing Departmental management interests and or assisting in the formulation of policies which impact areas affecting labor relations.

Scope of Bargaining

The requested amendments preclude bargaining on the "effects" of the Employer's exercise of a management right for the proposed supervisory unit. The duty to bargain the "effects" of an exercise of any of the statutorily defined Employer rights creates restrictions and delays on the Employer's ability to act in the management arena. An example of "effects" bargaining may be seen through the impact on frequently utilized management prerogatives such as the transfer, assignment and scheduling of employees. The use of these management rights is critical to the ability of the Police Department to operate in an efficient and effective manner in the delivery of police services. Before management may proceed to initiate a change in how employees are transferred, scheduled or assigned, the effect of the changes on employees may be subject to bargaining. Consequently, appropriate notice and opportunity to bargain must be extended to the exclusive representative. The result of any "effects" bargaining may place other limitations on management's ability to act such as a notice requirement, waiting period, opportunity for comment, compensation, etc. before a schedule change or transfer may occur. The requested amendments retain the status quo for the non-supervisory bargaining unit and provide, in essence, a scope of bargaining for supervisory employees which is consistent with bargaining rights extended to all other County employees.

In summary, the Executive's proposed amendments provide a reasoned approach to establishing the appropriate collective bargaining unit for supervisors. In particular, we believe that the proposed unit structure will preserve the supervisory community of interest. We look forward to addressing these issues with the Council and employee representatives.

cc: Charles A. Moose, Chief of Police
Bruce Romer, Chief Administrative Officer

Representational Treatment of Police Supervisors for Local Jurisdictions

Jurisdiction	Group	Separate Unit	Rank
Anne Arundel	Police Sergeants Association	Yes	Sergeants (68)
Baltimore City	FOP Lodge #3	Yes	Sergeants and Lieutenants (446)
Baltimore County	FOP Lodge #4	No	Lieutenant and below
D.C. Government	FOP	No	Sergeants and below
Howard	None	N/A	N/A
Prince George's	FOP Lodge # 89	Yes	Lieutenants and Sergeants
MD National Cap PK & Planning	FOP Lodge #30	No	Sergeants

Sec. 33-80. Collective bargaini

- (a) *Duty to bargain; matters subject to bargaining.* Upon certification of an employee organization, as provided in section 33-79, the employer and the said certified representative shall have the duty, through their designees, to bargain collectively with respect to those subjects as follows:
- (1) Salary and wages, provided, however, that salaries and wages shall be uniform for all employees in the same classification;
 - (2) Pension and retirement benefits for active employees only;
 - (3) Employee benefits such as, but not limited to, insurance, leave, holidays and vacation;
 - (4) Hours and working conditions, including the availability and use of personal patrol vehicles;
 - (5) Provisions for the orderly processing and settlement of grievances concerning the interpretation and implementation of the collective bargaining agreement, which may include binding third party arbitration and provisions for exclusivity of forum;
 - (6) Matters affecting the health and safety of employees; and
 - (7) The effect on employees of the employer's exercise of rights enumerated in subsection (b) hereof.
- (b) *Employer rights.* This article and any agreement pursuant hereto shall not impair the right and responsibility of the employer:
- (1) To determine the overall budget and mission of the employer and any agency of county government;
 - (2) To maintain and improve the efficiency and effectiveness of operations;
 - (3) To determine the services to be rendered and the operations to be performed;
 - (4) To determine the overall organizational structure, methods, processes, means, job classifications or personnel by which operations are to be conducted and the location of facilities;
 - (5) To direct or supervise employees;
 - (6) To hire, select and establish the standards governing promotion of employees and to classify positions;
 - (7) To relieve employees from duties because of lack of work or funds, or under conditions when the employer determines continued work would be inefficient or nonproductive;
 - (8) To make and enforce rules and regulations not inconsistent with this law or a collective bargaining agreement;
 - (9) To take actions to carry out the mission of government in situations of emergency;
 - (10) To transfer, assign and schedule employees.



MONTGOMERY COUNTY COUNCIL

Derick Berlage

Councilmember - District 5

MEMORANDUM

April 5, 2000

TO: Phil Andrews, Lead Councilmember for Personnel Matters
Management and Fiscal Policy Committee

FROM: Derick P. Berlage, Councilmember

SUBJECT: Amendments to Bill 10-00

I continue to support the above-captioned bill essentially as introduced. At the same time, as you know, several amendments and changes to the legislation have been requested. I would like to address one of these issues with an amendment to the bill.

While I do not support the County Executive's proposed amendments, I do support offering Police Lieutenants and Captains the opportunity to bargain collectively. I propose that this be accomplished by creating a separate bargaining unit for Lieutenants and Captains. Members of that bargaining unit could then decide whether and by what organization they wish to be represented, according to the provisions of Montgomery County Code Section 33-79.

I appreciate the Committee's consideration of this amendment.

cc: Councilmembers
Mike Faden





OFFICE OF MANAGEMENT AND BUDGET

Douglas M. Duncan
County Executive

MEMORANDUM

Robert K. Kendal
Director

April 11, 2000

TO: Michael L. Subin, President
Montgomery County Council

VIA: Bruce Romer
Chief Administrative Officer

FROM: Robert K. Kendal, Director
Office of Management and Budget

SUBJECT: Amendment to Council Bill 10-00: Collective Bargaining – Police Sergeants

The purpose of this memorandum is to transmit a fiscal impact statement to the Council President based upon the County Executive's requested amendments to Council Bill 10-00.

SUMMARY

The County Council proposed Bill 10-00 amends Chapter 33 of the Montgomery County Code, Personnel and Human Resources. The proposed amendments would add Police employees classified as Sergeants in a bargaining unit for the purpose of collective bargaining. This bargaining unit would be separate from the existing non-supervisory, uniformed bargaining unit for Police employees.

The County Executive supports the proposed Council Bill. However, the County Executive, in consultation with the Chief of Police, has proposed to amend Council Bill 10-00 to bring Sergeants, Lieutenants, and Captains within the scope of collective bargaining.

POLICE SERGEANTS, LIEUTENANTS, AND CAPTAINS - FISCAL SUMMARY

The Office of Human Resources anticipates additional operating costs associated with collective bargaining in the years that new agreements are negotiated with the County as a result of this legislation. During FY01, County labor negotiations would begin with the new supervisor's bargaining unit chosen by the employee organization. The projected operating cost

impact in FY01 is estimated at \$39,000. These costs are related to operating expenses which would support the collective bargaining process. No additional operating expenses are projected for the FY00 approved budget as a result of the County Executive's amendments to Council Bill 10-00.

		FY 01
Personnel Cost	None	\$0
Operating Expenses		\$39,000
Total		\$39,000

Jim Torgesen, Office of Human Resources, contributed and concurred with this analysis.

RKK: db

cc: Marta Brito Perez, Director, Office of Human Resources

m:\fis\CB 10-00 Police Sergeants Memo (CE Amend).doc

Issuing Department: Office of Human Resources

Contact Person: Jim Torgesen 240-777-5050

Council Bill No.: 10-00 (CE Amend)

FISCAL IMPACT STATEMENT

Collective Bargaining – Police Supervisors


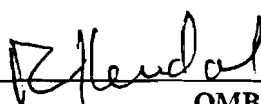
FISCAL SUMMARY: Presentation of the incremental increase or decrease in expenditures and revenues for the current and next fiscal years.

	<u>Current Fiscal Year FY 00</u>	<u>Next Fiscal Year FY 01</u>
1. Revenues:	0	0
2. Personnel Costs:		
Salaries and Wages:	0	0
Fringe Benefits:	0	0
Total Personnel Costs:	0	0
3. Operating Expenses:		
List Items:		
Total Operating Expenses:	0	39,000
Capital Outlay :	0	0
Total Expenses (2 + 3):	\$0	\$39,000
4. Positions Affected:		
Positions:		
Part-Time:	0	0
Full-time:	0	0
Workyears:		
Part-Time:	0.0	0.0
Full-time:	0.0	0.0

5. Assumptions and Explanations: See attachment memorandum

6. Economic Effect on Private Sector: N/A

OMB REVIEW

 Fiscal Impact Statement approved  9/10/00
OMB Director

_____ Fiscal Impact Statement not approved, OMB will contact department to remedy.



Montgomery County Lodge 35, Inc.

April 27, 2000

Honorable Michael Subin
President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

RE: Bill 10-00, *Collective Bargaining - Police Sergeants*

Dear President Subin:

In advance of Council's consideration of Bill 10-00 and amendments, Lodge 35 and its Supervisors Committee ¹ strongly urges the following:

- o That the existing bargaining unit be expanded to include sergeants subject to a vote by sergeants to determine if they want to be represented. Thereafter, they would be eligible to participate in any representation election.
- o That sergeants have the right to bargain "effects" of the exercise of existing management rights.

At a meeting of sergeants held on April 25, 2000, all but one sergeant in attendance voted to support the above. The one who did not vote for these provisions was undecided. None was opposed.

In a memorandum dated April 7, 2000 [MFP 1, 4/11/00, C. 23-26] Jim Torgesen, Labor/Employee Relations Manager, OHR, correctly identified four criteria commonly applied in determining unit composition. These include: Desires of Employees, History of Representation, Extent of Union Organization, and Community of Interest.

¹ The Lodge 35 Supervisors Committee is a functional unit of FOP Lodge 35 and was first created in 1982, then rechartered in 1996 for three basic purposes: 1. To recognize the importance of supervisors within the FOP; 2. To coordinate FOP representation of police supervisors; and 3. To pursue collective bargaining rights for police sergeants. The committee is chaired by a police sergeant and all of its members are Montgomery County police sergeants. In accord with Lodge 35 Bylaws, the president is an *ex officio* member of all committees.

Michael Subin
April 27, 2000

Page Two

Desires of Employees At a Supervisors Committee meeting called and chaired by their peers, MCP sergeants voted their desire in detail, *supra*. In stark contrast, the OHR memorandum relates that the chief of police [management] held *separate* meetings - one with sergeants (where attendance was "mandatory", Attachment 1) and another with lieutenants and captains. OHR says that the police "chief concluded from these two meetings that employees in the ranks of sergeant, lieutenant, and captain were interested in . . . collective bargaining." Significantly, OHR does not state that it was the desire of sergeants to be in a bargaining unit with lieutenants and captains. Indeed, any such conclusion would be inaccurate. Moreover, employees should be allowed to express their desire directly or as a group, without management involvement, such as the Sergeants Committee, and not through management. (87% of current sergeants are active, dues-paying members of FOP Lodge 35.) ²

History of Representation As stated in our public testimony, Lodge 35, which is the certified representative of non-supervisory police officers, has a long, proud tradition in representation of all members, including sergeants. While one or another organization may have represented a few sergeants in the past, the fact remains that the organization representing the current unit has provided more extensive representation to the vast majority of individual sergeants represented in the past 19 or more years.

The Immediate Past President of Lodge 35 was a police sergeant.

From July 1, 1983, the effective date of our first contract, to June 30, 1988, the expiration date of our second contract, FOP dues for sergeants were deducted pursuant to those contracts. Effective July 1, 1988, the County unilaterally, and for political reasons only, discontinued FOP dues check-off for sergeants. And, as stated in our public hearing testimony, the County, through OHR, filed a Charge of Prohibited Labor Practice against Lodge 35 for representing sergeants. The Charge was later withdrawn, but stands as a monument to the history of our representation of sergeants.

² In a March 16, 2000 letter to Mr. Berlage [MFP 1, 4/11/00, C. 22], the Alliance of Police Supervisors said that, on April 16, 1998, they surveyed sergeants to determine their interest and stated: "The results of this survey indicated that 60% of the sergeants wanted the Alliance of Police Supervisors to represent them." Choice of representative is a decision to be made by all sergeants, by secret ballot, not by survey. However, on April 7, 1998, nine days earlier, lieutenants and captains were surveyed by the Alliance of Police Supervisors via a memorandum addressed to "Alliance of Police Supervisor Members." That survey presented two choices: Yes, I am interested in one organization to attain collective bargaining or No, I believe the Sergeants should have a separate bargaining organization. (Attachment 2.) The options were limited and, while it is not our intention to involve Council in a representation debate, we present this issue for the sole purposes of 1. pointing out that the stated result is not consistent with the action taken at our meeting of last Tuesday and 2. demonstrating that the referenced survey is not a valid indicator of the desire of employees.

Extent of Union Organization OHR correctly notes that the unit structure in the metropolitan area and Maryland is mixed. North of the Mason-Dixon Line, union representation isn't treated as such a major threat. However, here, south of that Line, Prince George's County, the only other Maryland jurisdiction with binding arbitration, has a single contract covering all officers through the rank of lieutenant, negotiated by FOP Lodge 89.³ Washington, D.C., which also has binding arbitration, is a single unit that includes sergeants. The MNCPPC police, which is partly Montgomery County funded, has a single unit that includes police sergeants.

Baltimore County has a single unit that includes all officers through the rank of lieutenant, represented by FOP Lodge 4. Baltimore City has a separate unit for sergeants and lieutenants represented by FOP Lodge 3. Anne Arundel has a separate unit for sergeants, represented by a different union. (There has been considerable turmoil in AA County over the years, including two representation elections between the Teamsters and FOP Lodge 70 which represents non-supervisory officers.) Howard County sergeants do not have bargaining rights. However, in several smaller jurisdictions, sergeants are in the same unit as non-supervisory officers.⁴

In the two area jurisdictions with binding arbitration, sergeants are represented by the same union and covered by the same contract.

As noted, the MNCPPC police have a unit that includes sergeants. In the Montgomery County school system, certain non-certificated supervisory employees are in the same unit as nonsupervisory employees and represented by SEIU Local 500. Certificated employees are in two units, one represented by MCEA and the other represented by MCAASP. MCEA represents Resource Teachers and Teacher Specialists.⁵ For budgetary and political reasons, care has been taken to avoid labeling these teacher positions as "supervisors," but the fact remains that, in practice, they perform jobs comparable to those of police sergeant. While the Executive may want to dispute the comparison, we suggest that it is merely a matter of semantics on his part. Attachment 3.

Moreover, State law which governs school employee collective bargaining, does not exclude supervisory employees from non-supervisory unions.

³ Mr. Torgesen is correct that PG County technically has separate units - one for non-supervisory employees and another for sergeants and lieutenants. However, one union is recognized and certified for both units and one contract covers both units. It was not the intent of Lodge 35 to mislead Council on this most technical issue. Knowing that FOP 89 has, for many years, had but one contract, we were simply mistaken.

⁴ Of the Chartered Maryland counties (including Baltimore City) with separate County (City) police departments, all but two (Howard and Montgomery) provide collective bargaining rights for sergeants. In Harford County, the Sheriff's Office provides police services.

⁵ In the early 1970s, school administrators were represented by MCEA. Later, at the request of MCEA, a separate unit was created for school administrators who are represented by another organization.

Community of Interest OHR says that "community of interest is of prime importance." And, says OHR: "Community of interest generally includes similarities in duties, skills and working conditions." We agree. However, OHR and the County Executive seek to set parameters that seem to fit their goal, i.e. one unit to include captains. They further resort to the "conflict of interest" scare tactic. In response, we submit that if there is a conflict of interest with a sergeant and a police officer whom s/he supervises being in the same bargaining unit, surely, there must be a conflict of interest between a captain and a sergeant being in the same unit.

It seems contradictory to the Executive's position that he proposes captains, who are two ranks above sergeants, be in the same unit with sergeants and involved in interpreting and administering the same contract that would cover both sergeants and captains.

It is curious that when the executive branch and OHR were opposing the current collective bargaining charter provision that there was no concern that the "interests of the supervisor [may have been] blurred [when both supervisors and non-supervisory officers were] covered by the same [rules, policies, and personnel regulations] that they [were] required to enforce."

We are puzzled that OHR and the Executive are concerned about how a sergeant might be expected to behave in a grievance proceeding if s/he were a member of the same unit as those s/he supervises when, since 1983, contract grievances are submitted directly to the police chief for initial resolution while the County's **unilaterally implemented grievance procedure [AP 4-4], applicable to non-supervisory officers in a few matters, provides for first step review by the immediate supervisor.**

More importantly, Lodge 35 credits police sergeants with the honor and integrity to do their jobs without evil intent or misconduct. They have demonstrated their integrity over the years of FOP representation and the history of that representation is proof that the alleged concerns of OHR and the Executive are without factual basis. We challenge the Executive to give us evidence of actual conflict that has occurred since Lodge 35 was chartered in 1969.

We could argue this matter for weeks, however, area jurisdictions, particularly those with binding arbitration, include sergeants in the same unit or under the same contract as non-supervisory officers.

Hence, this is purely a political decision. Politics, not facts, are the driving force behind the Executive's proposal.

Community of interest involves other factors not addressed by the executive. Working conditions between most sergeants and the existing unit are nearly **identical**. This is not true of sergeants and lieutenants or captains. Sergeants are assigned to shifts, they work shift work, they routinely respond to calls for service and make arrests. They make traffic stops, and they patrol. Simply put, they are field supervisors. Lieutenants and captains are not "field" supervisors, rather, by the department's own definition, they are "executive" officers.

The department holds executive-level meetings with its "executive" officers and, in a recent training offering, a course has a separate session for lieutenants and above.

Lieutenants and above even wear slightly different uniforms. ⁶

Clearly, the working conditions of sergeants are more similar to those of nonsupervisory officers.

Other Factors In the private sector, supervisors are precluded from bargaining. In the private sector, employees have the right to strike and have a broader scope of bargaining than their public sector counterparts. Traditionally, due to the nature of the job, police supervisors have been afforded bargaining rights and it is not uncommon for them to be included in the same unit as non-supervisory employees. ⁷

Unlike many other County positions and the private sector, every incumbent police sergeant was promoted from a non-supervisory Montgomery County police officer position. This is significant. Furthermore, all sworn police officers below the rank of police chief are in a common retirement system (Group F).

EFFECTS BARGAINING Effects bargaining is but another distraction. OLO Report 99-2 commented on effects bargaining without ever affording Lodge 35 an opportunity to comment. A Council Resource Committee, consisting of a diverse group of County residents (including the president of Lodge 35), was created to look into the police complaint system. OLO's charge was to address the complaint system.

After input from the Executive, OLO, without consultation with either the Resource Committee or Lodge 35, raised this issue. Effects bargaining is fairly common in the public sector in recognition that public sector bargaining rights are more limited than in the private sector.

We are disappointed that OLO denied Lodge 35 a fair opportunity to comment and explain this issue before it was raised in a formal report. (We did not see the final report until the late on the evening before it was publicly presented.) Notwithstanding the influence Council staff has within the institution of the County Council as a "part-time" body, fairness dictates that we be heard on matters affecting our interests. Council staff's perspective is frequently distorted and they seldom seek our views on issues within our expertise. (We do not refer here to individual Councilmembers' staff and aides.)

⁶ We express no opinion about lieutenants having bargaining rights or being included in our bargaining unit. The bill before you pertains only to sergeants.

⁷ All sworn police officers, regardless of rank, are constitutional officers. *Bradshaw v. Prince George's County*, 284 Md. 294, 396 A.2d 255 (1979). See also 72 Op. Atty Gen. Md. 271, January 13, 1987) A police officer may not serve as a member of the Maryland House of Delegates because both are constitutional "office[s] of profit." (In the General Election of 1996, the Maryland Declaration of Rights was amended to permit police officers and certain other public officials to simultaneously hold additional offices. This amendment did not, however, change the "public official" status of police officers.)

Michael Subin
April 27, 2000

Page Six

We would have welcomed an opportunity for full and open discussion of "effects bargaining" as well as the arguments put forth by the County in formal court pleadings, never considered or known to staff, which relate to the concerns the Executive claims he has in this important matter.

Even at this point, we invite that discussion, and point out that the recent Department of Justice findings were critical only of management's exercise of its rights, not of those matters that were collectively bargained.

Of considerable import, is the additional fact that it was only through the cooperation and leadership of FOP Lodge 35 that an agreement was reached between the County, DoJ, and Lodge 35 to improve police services and the complaint process, thereby avoiding litigation. In Pittsburgh, PA litigation continues despite a consent decree and in Columbus, Ohio, litigation has been initiated.⁸

It is no coincidence that here, in Montgomery County, we resolved important issues without litigation and that Lodge 35 has been overwhelmed with calls for assistance and requests to share its DoJ experiences with other unions throughout the Nation.⁹

We should be proud that DoJ, the County, and the police union have come together to enter into an agreement that serves as model for a collective bargaining law that enables cooperation and flexibility to resolve the effects of management rights short of full blown, disruptive federal litigation. It is unfortunate that the Executive has asked Council to dilute the law that enabled such cooperation.

Under the law, management has certain rights, i.e. the right to assign, transfer, lay-off due to lack of funds or work, determine methods of operation, and the union may bargain the effects of management's exercise of those rights upon employees. Effects bargaining does not prevent management from exercising its rights. For example, under the current contract, management may schedule employees. However, if it schedules employees without sufficient advance notice, it must compensate and make whole employees affected by the change. Unit members and sergeants have family and child care concerns and it is out of sensitivity for those concerns that effects have been bargained. Without effects bargaining, a schedule could be changed and an employee would be immediately (or on short notice) required to find care for an infant or young child and report for work without additional consideration. This is contrary to a County that talks of "Family Friendly Work Policies."

"Effects bargaining" does not prevent management from exercising its rights. It merely balances the interests of the employer and employee and, at best (or worst, depending on one's perspective) requires the employer to think about the effects of its intentions before it acts.

⁸ In Pittsburgh, DoJ and the City entered into an agreement over the objections of FOP Lodge 1. Thereafter, FOP Lodge 1 arbitrated changes that "effected" the consent decree. The City sued and the matter is pending in Federal court. In Columbus, the City and DoJ entered into a proposed consent decree. The FOP refused to agree and DoJ sued the City. Both suits are pending.

It is notable that every single Montgomery County police officer was furloughed several years ago despite effects bargaining, which did occur. And that crime has decreased in recent years, that the Cuban Interest Section residence was recently protected, and that we were prepared to go into Washington, D.C. to assist in the event of major civil disturbance during the recent World Bank/International Monetary Fund meetings without any "effects" problems.

Effects bargaining is especially important in police work because of the toll such work takes on the individual and family.

Since September 1999, two examples of "effects bargaining" have been raised before Council. One concerned pornography on the internet and the other was qualification of weapons. We will briefly comment on each.

Management submitted a proposal to Lodge 35 concerning use of County computers. That proposal was submitted pursuant to Article 61 of our contract. There was never any dispute over the issue of pornography on the internet. There was, however, considerable discussion about e-mail confidentiality, disciplining officers for sending their mothers birthday or Mother's Day greetings, and playing computer games such as "Hearts" or "Solitaire" on County computers. As we discussed these matters, the police department's representative was playing a computer game on a County computer. We asked if there was a County-wide policy on the use of e-mail. After discussions, the County withdrew its proposal. More recently, they indicated a desire to discuss it again, but have not followed through.

Over the years a very few officers have had difficulty qualifying with firearms. Through additional training and practice, all have qualified. Last year, three officers had difficulty. One qualified on the second round; one involved a disabled officer who was able to qualify; and the third was a non-bargaining unit member.

The State of Maryland has established firearms qualification standards. No Montgomery County police officer has carried a firearm in violation of those standards.

In neither of these matters has management implemented rules or procedures for non-unit members as it has the authority to do.

Additionally, much of what has been touted as "effects bargaining" is actually direct bargaining over working conditions. (In a Gazette article, former chief Thomas Evans mentioned the quality of toilet paper as being an example of "effects bargaining." We have never engaged in a controversy over quality of toilet paper, but if we did, it would fall under working conditions, not effects bargaining.)⁹

⁹ Under normal circumstances, Lodge 35 would not comment on petty issues like toilet paper, but since the recently retired deputy police chief raised the issue in a news article, we feel compelled to respond. Under our contracts, dating to 1983, there has never been a grievance over toilet paper. However, prior to legislation granting other County employees the right to bargain collectively, a police dispatcher did file a County grievance over lack of toilet paper in the women's rest room at ECC. That grievance was resolved.

Michael Subin
April 27, 2000

Page Eight

Topics such as "pornography" and "guns" make for great sensationalism and political fodder for anti-unionists, but the facts defy the rhetoric. Scare tactics frequently are effective means of depriving others of their rights. Senator Joseph McCarthy was a master at the game.

Such tactics currently are being employed to bully Council into funding "School Resource Officers" and it makes for great press, but does the Executive really believe that a single "School Resource Officer" in a school, armed with a 9 mm handgun, will save lives of students if two suicidal, heavily armed students open fire in a school cafeteria or library?

We urge Council to deal with facts, not respond to shallow tactics.

As with unit designation, effects bargaining is purely a political decision and does not adversely affect public safety.

Position Exemptions The Executive asks that you exempt certain positions from bargaining. The rationale for such exemptions could extend to all captains and above.

Since 1982, unit members have held positions in internal affairs, personnel (human resources), policy development, and others. In 18 years there has not been a conflict. In addition, current unit members have held supervisory positions on an acting basis without conflict.

The exclusion of certain employees whose counterparts have collectively bargained benefits and wages does not work in the field of policing. The Executive's proposal requires two pay scales -- one for represented supervisors and another for unrepresented. It creates conflict and confusion within an occupational classification -- especially at the sergeant level.

Other Considerations Inclusion of sergeants in the existing unit, after democratic vote, will have minimal impact upon the Executive and his staff. On the other hand, creation of a new unit will require separate bargaining and separate mediation and arbitration despite union certification. If a separate unit is created for sergeants, whether Lodge 35 or any other union is elected representative, negotiations will take place at different times, and arbitration will be conducted, possibly with a different arbitrator, separate from the existing unit. Two contracts will be produced.

The Executive will be bound to the outcomes of both agreements, both arbitrated and non-arbitrated. The Executive must provide for both agreements in his/her recommended budget. And, the representative(s) of each unit will appear before Council in support of each agreement notwithstanding any differences.

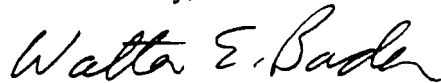
Michael Subin
April 27, 2000

Page Nine

In conclusion, there is ample evidence that sergeants can be included in the same unit and/or under the same contract as non-supervisory employees without conflict. It has worked elsewhere and can work here. There is no valid reason why effects bargaining should not apply to sergeants.

Your consideration is appreciated and we ask for Council's support.

Sincerely,



Walter E. Bader
President



Kirk Holub
Chair, Supervisors Committee

cc: Mr. Andrews, Lead, MFP
Mr. Berlage
Mrs. Dacek
Mr. Denis
Mr. Ewing
Mr. Leggett
Mrs. Praisner, Chair, MFP Committee
Mr. Silverman

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MONTGOMERY COUNTY POLICE MESSAGE ROUTING 16:05:16 02/23/00
FROM: HDQ31 TO: PDAL: X PDPT: ROCK: BETH: SILS: GLEN: GERM:
JUVN: RDET: BDET: SDET: WDET: GDET:
SID : GENA: OPER: ECC1: RECS: WARR:
HSEX: PSTA: CSS : AUTO: CCPD:
RCPD: GCPD: PARK: SHER: JAIL: FIRE:

TO: ALL SERGEANTS :

ALL POLICE SERGEANTS ARE REQUIRED TO ATTEND A MANDATORY MEETING WITH CHIEF MOOSE ON WEDNESDAY MARCH 1, 2000, AT THE PSTA, ROOM 5 AND 6, FROM 7-9 PM. THOSE WHO CAN'T ATTEND DUE TO EXTRAORDINARY CIRCUMSTANCES SHOULD NOTIFY THEIR DIVISION DIRECTOR. OVERTIME IS AUTHORIZED. THANK YOU.

LOG NO. 356

SENDER: SERGEANT DARIN MAGEE

FEB 25 2000

AUTHORITY: CHIEF MOOSE

MONTGOMERY COUNTY LODGE 35 FOP

1 A

(41)

TO ALL SGTs

FEB 25 2000

MONTGOMERY COUNTY LODGE 88 FOP

THE CHIEF HAS SCHEDULED

A MANDATORY MEETING FOR ALL

SGTs ON 03/01/00. YOU MUST

HAVE MY PERMISSION TO MISS THIS

MEETING (ONLY ACTS OF GOD WILL

BE ACCEPTABLE REASONS FOR NOT ATTENDING

THIS IS TO DISCUSS COLLECTIVE

BARGAINING FOR SGTs - NOW IS

YOUR CHANCE TO EXPRESS YOUR

THOUGHTS ON THE MATTER

GOOD LUCK

CAPT RITHGERS

1 B

(42)

TO: ALLIANCE OF POLICE SUPERVISOR MEMBERS
FROM: DREW J. TRACY
SUBJECT: COLLECTIVE BARGAINING
DATE: APRIL 7, 1998

Recently an effort has been initiated to start a new organization for Sergeants with the goal of collective bargaining under a union type structure. This initiative has support for the concept by the majority of Sergeants. I personally believe that Sergeants, Lieutenants and Captains should all be included in this new organization. Presently a few individuals want an organization only for Sergeants but other individuals believe it will serve us better to have executive officers also represented.

I am sending this memorandum to all Lieutenants and Captains asking if they are interested in our organization combining with Sergeants with the goal of attaining collective bargaining. I am not familiar with the structure of creating a bargaining unit organization but I believe we may remain as the Alliance of Police Supervisors with a few legal changes to allow collective bargaining.

Please take the time to answer this survey and forward your return to me at FSB in Headquarters.

____ Yes, I am interested in one organization to attain collective bargaining.

____ No, I believe the Sergeants should have a separate bargaining organization.

2.

(43)

Division of Employment Standards and Operations

Division of Employment Standards and Operations

Division of Employment Standards and Operations

ROLE OF THE RESOURCE TEACHER

This document is a job description for resource teachers. As such, it provides necessary clarification of the role for purposes of recruitment. In addition, it is a checklist of accountability both for the resource teacher in the performance of duties and for the administrator in providing supports so that the resource teacher can function as an instructional leader. Finally, it constitutes the substantive basis for the yearly evaluation of persons serving in this leadership role. With two minor clarifications (note underlining) in sections III.A. and IV., it is the statement which was discussed with the Board of Education on October 13, 1970, and which, in turn, was a clarification of the job description appearing in Evaluative Criteria--Secondary (1967).

I. Duties and Responsibilities

A. Liaison Function

1. Serves as liaison between department members and school administration and between department members and appropriate coordinators in matters pertaining to curriculum and instruction
2. Meets regularly with subject coordinator
3. Meets with principal and appropriate associate superintendent or cluster director
4. Keeps principal informed in matters pertaining to the program and the department

B. Instructional Leadership

1. Works with the department, administration, and counselors in the development of the schedule and the placement of students in appropriate classes
2. Assists classroom teachers in the following:
 - a. Classroom organization and management
 - b. Selecting, locating, and securing instructional materials and other aids
 - c. Developing skills and techniques of instruction
 - d. Interpreting test results to identify abilities of each student
 - e. Seeking ways to involve students meaningfully in their educational program
 - f. Adapting the county program to the needs of the local school community

3. A.1 (44)

- g. Helping to plan the best program for each instructional group by adapting the curriculum to the needs of individuals
 - h. Planning for the most productive use of aides and volunteers
 - i. Using and caring for equipment
 - j. Developing plans for daily work as well as in long-range planning
 - k. Self-evaluation, self-improvement, and evaluation of program
3. Assumes leadership role in selection, location, and purchase of instructional materials
 4. Holds departmental meetings on matters that are the appropriate instructional concern of the department and the total school
 5. Helps foster cohesive, cooperative pattern of interpersonal relationships within the department
 6. Meets periodically with principal and appropriate associate superintendent or cluster director to confer on matters of program and instruction
 7. Gives aid and support to substitute teachers (checks emergency plans, etc.)

1. Duties and Responsibilities (continued)

C. Program and Teacher Growth and Development

1. Participates in interviewing and selecting prospective teachers for department
2. Assists principal in latter's evaluation of teachers and may, at the teachers' option, participate in the teacher's evaluation conference
3. Visits classes to appraise program quality and confers with teachers about observations
4. Confers frequently with the members of the department on an informal basis
5. Participates in the planning of school staff development activities and assumes a leadership role in planning those of the department
6. Provides leadership in developing department goals consistent with area and county goals
7. Assists teachers in the development of long-range plans
8. Provides leadership in the utilization of student records and test results
9. Stimulates an awareness of research and curricular development in subject fields
10. Plans with teachers most effective ways of using courses of study and instructional materials

3. A. 2. 45

D. Curriculum Development

1. Keeps informed of new trends and programs in fields of responsibility
2. Participates in in-service activities related to duties
3. Is a permanent member of appropriate review and evaluation committees
4. Assists in the summer and at other appropriate items in writing of curriculum materials

E. Departmental Administration

1. Assists principal in providing overall leadership in instructional program of the school
2. Supervises the use of clerical aide(s) assigned to the department

II. Qualifications

A. Education

1. Holds, from an accredited institution, a master's degree or its equivalent in semester hours of credit or is within one year of fulfilling this requirement
2. Has successfully completed appropriate hours of work in subject areas in which responsibility will be borne
3. Demonstrates evidence of continuing professional study and work-related growth

B. Experience

1. Has had a minimum of three years of outstanding teaching experience
2. Has had appropriate teaching experience within subject fields of the department

C. Human Relations

1. Demonstrates skill in working effectively with people
2. Shows deep concern for individual students

III. Selection and Continuance of Service

A. Shall be selected by the principal and the appropriate associate superintendent in consultation with the subject coordinator and the members of the department or members chosen by the department to represent them

B. Shall not have guaranteed tenure in the position

3-A.3 (46)

IV. Evaluation

Shall be evaluated yearly in terms of this job description by the principal in consultation with the department, the subject coordinator and the appropriate associate superintendent. The evaluation shall be conducted in accordance with Article 16 of the MCEA-BOE Negotiated Agreement.

8/93



3. A. 4 (4)

CLASSIFICATION

OFFICIAL TITLE: Teacher Specialist	CODE: 1602
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WORKING TITLE: Teacher Specialist, Transition Demonstration Project	GRADE: C-D
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<p>SUMMARY DESCRIPTION OF CLASSIFICATION:</p> <p>Under direction, assists the project manager and division director in planning and implementing the project components of the Head Start/Public School Early Childhood Transition Demonstration Project. Provides support to demonstration classroom teachers and aides; develops, coordinates, and implements in-service programs and conducts training sessions for parents.</p>
--

MINIMUM QUALIFICATION STANDARDS

<p>KNOWLEDGE, ABILITIES, AND SKILLS:</p> <p>Thorough knowledge of administration of large federal grants. Knowledge of current research and trends in early childhood education with special emphasis on developmentally appropriate curriculum, instructional practices, and assessment. Knowledge of instructional uses of technology. Ability to work effectively with administrators, principals and teachers in providing schools assistance in the implementation of the educational component of large federal grants (e.g., Head Start and/or Title I). Ability to plan and develop training sessions and collaborate with other departments and units to design staff development opportunities. Excellent written and oral communications and human relations skills.</p>
--

<p>EDUCATION, TRAINING, AND EXPERIENCE:</p> <p>Master's degree from an accredited college or university in early childhood or elementary education with course work in early childhood education. Course work in staff development, supervision, curriculum development and instruction desirable. Five years successful teaching experience at the nursery to Grade 3 level required with children across all instructional and economic levels. Experience conducting training for a variety of audiences preferred. Other combinations of applicable education, training, and experience which provide the knowledge, abilities, and skills necessary to perform in the position may be considered.</p>

<p>CERTIFICATE AND LICENSE REQUIREMENTS:</p> <p>Meets Maryland state certification requirements for an Advanced Professional Certificate in early childhood or elementary education field.</p>

3.B. (48)

PHYSICAL DEMANDS: (Special requirements such as lifting heavy objects and frequent climbing.)

Must be able to move materials/equipment to and from different sites on a regular basis.

SPECIAL REQUIREMENTS: (Frequent overtime or night work required, etc.)

May be required to work evenings to meet deadlines or to attend BOE, committee, PTSA or other meetings.

PAID OVERTIME:

No

EXAMPLES OF DUTIES AND RESPONSIBILITIES:

Working with the project manager and division director, the Transition Demonstration Project teacher specialist:

Plans and implements the dissemination of project components

Coordinates all staff development and instructional activities with project staff in four

Transition Demonstration schools. Develops, coordinates and conducts professional and support staff training.

Assesses program as well as needs of individual teachers and teaching teams and develops short and long range plans.

Works with principals to achieve coordination of school-based program initiatives.

Chairs the Transition Demonstration Project Education Committee.

Visits and supports teachers in implementing subject matter curriculum and interdisciplinary applications. Provides in-classroom assistance to teacher/instructional assistant teams. May assist classroom teachers in observing, diagnosing, and prescribing instructional activities/processes to facilitate students acquisition of skills and strategies, including activities for special needs. May provide input to teachers and classroom aides by observing in classroom settings, offering technical assistance, and conferring with staff to discuss suggestions/recommendations regarding teaching techniques and other matters relative to more enhanced performance.

Plans for and integrates the use of appropriate technology, such as microcomputers, into the academic instructional program in cooperation with staff of the Office for Global Access and Office of Instruction and Program Development.

Identifies, evaluates, and selects instructional materials to support MCPS early childhood education

efforts.

Works with staff to monitor student performance and assists with Transition Demonstration Project evaluation component where appropriate.

Plans and monitors implementation of the MCPS Early Childhood Education and Parent Involvement policies.

Participates in systemwide and community presentations to describe and clarify Transition Demonstration Project and school programs.

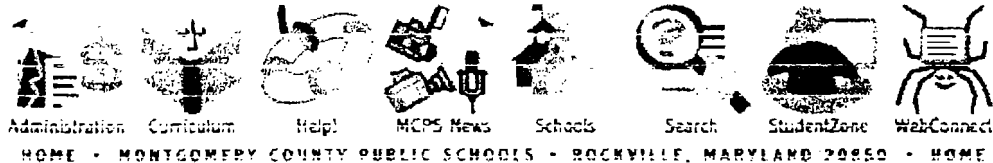
Performs related tasks as required.

Class Established: 9/95

Date(s) Revised:

This description may be changed at any time.

Note: A general guide to class description, which includes definitions of standard terms used, is considered an integral part of this description and is available from the Department of Personnel Services.



3.B.3 (50)



Montgomery County Lodge 35, Inc.

June 2, 2000

Honorable Derick Berlage
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Bill 10-00 *Collective Bargaining - Police Sergeants*

Dear Mr. Berlage:

Again, on behalf of Lodge 35 and its members, including police sergeants, I want to thank you and the co-sponsors of Bill 10-00 for supporting the sergeants collective bargaining bill, legislation which you appropriately indicated is long overdue.

As stated in prior correspondence and statements before the MFP Committee, police sergeant collective bargaining is very common in Maryland and throughout the country. Similarly, the inclusion of police sergeants and even lieutenants within the same bargaining unit, or under the same collective bargaining agreement, is an established practice.

Unfortunately, the major issues are being distorted by the irrational objection of the administration to so-called "effects bargaining." This distraction must, we feel, be addressed head-on to avoid future controversy, litigation, and misperception. Moreover, "effects bargaining" has been used as a red herring by our opponents.

The stated purpose of the Police Labor Relations Act ["PLRA"] is "to promote a harmonious, peaceful and cooperative relationship between the county government and its police employees and to protect the public by assuring, at all times, the responsive, orderly and efficient operation of the police department." The law further recognizes that "[s]ince unresolved disputes in the police service are injurious to the public and to police employees as well, adequate means should be provided for preventing such unresolved disputes and for resolving them when they occur." PLRA § 33-75.

We have honored this public policy and, indeed, since April 1982 when the current law was enacted, there have been no job actions by police officers; no picketing; no slowdowns; and no other actions that impaired our ability to serve the public. This is a significant tribute to a thoughtfully crafted law that was the result of hard work by the County Council, the Gilchrist Administration, and Lodge 35.

60 JUN 2 AIO: 13

COLLECTED

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Page Two

Our law was the first collective bargaining law enacted in Montgomery County. It includes specific reference to "effects bargaining." On the other hand, the County Employees and Firefighter laws do not make such specific reference, but those laws do indeed require "effects bargaining."

It is because the older Police law makes specific statutory reference to "effects" that there is been very little litigation or dispute over the issue. In contrast, the newer County Employees law has been clarified through dispute and litigation. Indeed, MCGEO has had to file more Unfair Labor Practices Charges since their law was enacted in 1986 than has the FOP under the PLRA enacted in 1982.

It is in the spirit of resolving this issue here and now, rather than later, that we present the following for Council review and consideration.

EFFECTS BARGAINING

One of the bedrock concepts in American labor relations jurisprudence is "effects bargaining." Effects bargaining is basic to the practice of collective bargaining in practically every jurisdiction. It is a necessary component of the exercise of "management rights" both in the public and private sectors.

The National Labor Relations Board [NLRB] in its landmark decision *Ozark Trailers, Inc.*, 161 NLRB 561, 63 LRRM 1264, 1266 (1966) cited to earlier precedent in defining this concept, and explained that even when an employer is undertaking a managerial decision, such as the decision to completely shut down operations - perhaps the most fundamental management right of all:

an employer is still under the obligation to notify the union of its intentions so that the union may be given an opportunity to bargain over the rights of the employees whose employment status will be altered by the managerial decision.

This duty cannot be neatly limited to a specified list of subject areas or scenarios. As Hill and Sinicropi explain in their often-cited text *Management Rights*, (BNA Books, 1989) at p. 412:

The courts have not limited the scope of effects bargaining to a specific list of subjects. All aspects related to that decision may be encompassed in the broad scope of effects bargaining.

Indeed, as the NLRB has often recognized:

The effects are so inextricably interwoven with the decision itself that bargaining limited to effects will not be meaningful if it must be carried on within a framework of a [management] decision which cannot be revised. An interpretation of the law which carries the obligations to 'effects,' therefore, cannot well stop short of the decision itself which directly affects 'terms and conditions of employment.'

Page Three

Ozark Trailers, supra, at p. 1269. This iron link between the exercise of any management right and the duty to bargain how that exercise is to be effectuated is not set out in the text of the Federal Labor Management Relations Act, 29 U.S.C. §151 *et seq.* (LMRA). The LMRA merely requires that private sector employers "meet at reasonable times and c&a2661H"management rights" and "effects bargaining"

arise inexorably from the process of defining the frontier between what constitutes "wages, hours, and other terms and conditions of employment," and what subjects lie outside the duty to bargain.

The propriety of the concept of "effects bargaining" was approved by the U. S. Supreme Court in *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981). There, the Court said:

[B]argaining over the effects of a [managerial] decision must be conducted in a meaningful manner and at a meaningful time....[The union] has some control over the effects of the decision and indirectly may ensure that the decision itself is deliberately considered.

452 U.S. at 682.

The twin concepts of "management rights" and "effects bargaining" have continued to be applied in public sector collective bargaining throughout the United States. Pursuant to the Civil Service Reform Act of 1978, employees of the Federal Government were granted collective bargaining rights. While the parameters of those rights are somewhat different than for the private sector (e.g. Federal employees are not permitted to strike), the basic concepts remain the same. As the U.S. Court of Appeals for the District of Columbia observed in *Dept. of Defense v. FLRA*, 659 F.2d 1140 (D.C. Cir. 1981), *cert. denied*, 455 U.S. 945 (1982):

Even with regard to reserved management rights, the Act authorizes collective bargaining over the 'procedures which management officials of the agency will observe in exercising [their] authority....'

Thus, "effects bargaining" is also described as the duty to bargain over the procedures for implementing a managerial decision.

The same concepts have also been applied in Montgomery County collective bargaining laws, whether or not the County statute specifically includes a detailed guide to effects bargaining. The County Collective Bargaining Law, § 33-101, *et seq.*, Mont. Co. Code, 1994, and the Fire and Rescue Collective Bargaining Law, § 33-147, *et seq.*, Mont. Co. Code, 1994, do not include the general reference to effects bargaining found in the County's Police Labor Relations Act at § 33-80(a)(6). Nevertheless, "effects" or "procedural implementation" bargaining have been determined to be a necessary concomitant to the subjects of bargaining outlined in the County Collective Bargaining Law at § 33-107(a).

Page Four

In *Montgomery County Government v. MCGEO-UFCW Local 400*, Case 90-1, the Montgomery County Labor Relations Administrator (LRA) determined that four bargaining proposals by MCGEO regarding contractual procedural regulation (by the use of seniority) of the County's implementation of the management rights to transfer, promote, fill vacancies, and assign overtime are "legal" proposals under County law. In reaching that decision, the LRA reviewed major precedents in state and local public sector bargaining affirming the concepts of effects bargaining. In that case, even the County conceded some of the basic premises of effects bargaining. The LRA noted:

In any event, the County's position throughout has been that it is legal and appropriate to entertain and discuss 'seniority' proposals, and to agree to same, when it is 'post-decisional' i.e. after the County decides that services and operating efficiencies are not substantially impaired....

The four proposals as written do not violate the County's prerogatives. The County concedes that the proposals fall within the general definition of 'conditions of employment' under [the statute] ... and since seniority matters are of fundamental concern to employees, the County violated the statute by failing to bargain.

This decision brings us full circle to the premise enunciated by the Supreme Court in *First National Maintenance, supra*: "[The union] has some control over the [managerial] decision...."

As we have referenced, the Police Labor Relations Law includes at Section 33-80(a)(7) the duty to bargain:

The effect on employees of the employer's exercise of rights enumerated in subsection (b) hereof.

Section 80(b) lists management rights under the PLRA.

Whether or not such a provision were to be included in any collective bargaining legislation covering police supervisors or other County employees not presently covered by a collective bargaining unit, the concept of "effects bargaining" is so deeply ingrained in American labor relations jurisprudence, that any statute directing collective bargaining regarding any subjects traditionally included within the concept "wages, hours, and other terms and conditions of employment" necessarily includes effects bargaining.

During the 18 years of the parties' experience with the PLRA, there have been few if any formal controversies regarding the scope of proper subjects of bargaining. This excellent experience has been fostered by the detailed clarity of the bargaining duty under the PLRA. Removal of the specific reference to effects bargaining from any future law would simply raise the possibility that sergeants, through their union, will have to clarify that such bargaining is required through litigation, such as occurred shortly after the promulgation of the County Collective Bargaining Law in 1996.

LAW SHOULD BE CONSISTENT

A problem with exclusions of specific reference to "effects bargaining" is that two groups of police employees will be bargaining under different statutes. This is akin to a football game where one team plays under NFL rules and the other plays under Canadian Football League [CFL] rules. Clearly, confusion and disputes will result.

Moreover, established legislative terms and understandings will be disputed and a new law will need to be defined through dispute resolution mechanisms and litigation. This is not in the larger interest of the sound public policy articulated at § 33-75.

The PLRA represents a balance of the interests between Management and the Union. American labor law has evolved over scores of years as a result of the struggles of employees to achieve democracy in the workplace on the one hand, and management to hold onto what it perceives as its "prerogatives."

It is out of respect for the manner in which the PLRA was drafted in response to a Citizen Initiative that Lodge 35 has not sought to expand the scope or parameters of the PLRA beyond the inclusion of sergeants under the same law. (We were honest and open with the 1982 Council and Executive, as well as political candidates since that time, that we intended to continue to push for inclusion of sergeants.) Unfortunately, the Duncan Administration has exploited this legislation and the OLO study of the police complaint system to attack an established law.

"EFFECTS BARGAINING" IS WIDELY MISUNDERSTOOD

"Effects bargaining" has been blamed for all sorts of perceived evils unrelated to the concept. Interestingly, the department issues internal directives regularly. Very few of those directives involve bargaining. Those that do, generally address mandatory bargaining, not effects. For instance, directives and policies on arrest procedures, enforcement priorities, district boundaries, crime reporting, selective enforcement, issuance of citations, jurisdiction, department organization, search and seizure, prisoners and fugitives, community services, and public relations rarely result in bargaining of any kind. And when they do, bargaining is limited to small and specific portions that involve working conditions.

Part of the confusion has been the result of Contract Article 61 *Directives and Administrative Procedures*. That Article requires that "[n]egotiable matters pertaining to administrative procedures, department directives, and rules referenced in this agreement . . . are subject to addition, change, amendment, or modification, only after specific notice is provided to the union with an opportunity to bargain and after the parties reach agreement. If no agreement is reached, the addition, change, amendment, or modification shall not be implemented." The Article further provides that

Page Six

"[c]hanges to directives, rules and procedures not enumerated in th[e] agreement, or the effects on employees of the employer's exercise of a management right as enumerated in Article 42 § A, which involve matters appropriate for collective bargaining will be proposed by the County to the Union for bargaining. Thereafter, and before implementation, bargaining and agreement shall occur. Failing agreement, the dispute will be resolved pursuant to the impasse procedures . . . of Chapter 33, § 33-81(b) of the Montgomery County Code."

This Contract Article simply affords the County flexibility to seek change without waiting for bargaining on a successor (or term) contract. An analogy to the County's budget process might be appropriate.

In March of each year the Executive submits a recommended budget to Council. Council spends considerable time analyzing and questioning the recommendation. By law, a date is set for approval of the budget that becomes effective on July 1.

Should the Executive desire to amend or supplement the budget after July 1, s/he must follow certain procedures and submit the request to Council. As you well know, certain requests are barred until after January 1. Charter § 307. Emergency appropriations to meet specific circumstances can be made at any time. Charter § 308. In both cases, public notice is required. These charter provisions apply to all county agencies, including public safety.

Council will deliberate and discuss these supplemental budget requests. Year after year, we read of the Executive's expressed frustration with Council for doing its job. Executives have accused Council of micro-managing, interfering, endangering public safety, etc. The rhetoric goes on year after year, budget after budget. Such is the nature of our democratic form of government.

Like the budget process, the term bargaining process takes place at certain times. Contracts last for not less than one, nor more than three years. In November, we commence the process. If no resolution is reached by January 20, impasse reached. All issues must be resolved by February 1 and portions of the Agreement requiring Council action must be submitted as part of the Executive's Recommended Budget. By May 1, the Council must indicate its intent to accept or reject all or any portion of the agreement. If any portion is rejected, the parties enter into a process for resolution. The contract becomes effective on July 1.

Therefore, for purposes of our analogy, term bargaining is like the annual budget process. Interim bargaining under Article 61 and "effects bargaining" is like supplemental budget requests.

Both the budget and bargaining processes require deliberation and review by the parties, neither interferes with the efficient and effective delivery of essential public services. Both are subject to complaints by the Executive!

Page Seven

In this regard, management is critical of Lodge 35 for its thorough analysis of issues submitted for bargaining, saying this is time-consuming. Like legislatures and good business in all segments of our society, all parties have a duty to be thorough. We do not take our obligations lightly.

Another recent management complaint has been the delay in bargaining "effects" and non-effects issues midterm in the contract. Both sides have been responsible for delay in various matters. If this is a concern of either management or the union, either is free to require the other to bargain through established procedures, e.g. Charge of Prohibited Labor Practice.

Penultimately, it must be restated that the Police Complaint Process study that brought this issue to the forefront of attention is mostly unrelated to any collective bargaining. The investigation of most complaints against police officers, and all complaints alleging excessive use of force, is governed by the Law Enforcement Officers' Bill of Rights. Article 27, § 727, *et seq.* of the Annotated Code of Maryland.

That law affords police officers certain procedural rights in investigations, including the right to ten (10) days to obtain representation before being subjected to questioning of the officer concerning his/her conduct. Hence, no matter how serious the allegation, the officer has ten days after notification to make a statement, but management frequently postpones asking for that statement, thereby delaying the process. But, as stated, this is state law, not collective bargaining.

Management complains of this law and says, that because of "effects bargaining" it can't engage in corrective action to prevent inappropriate conduct. Our response is simple: In the very few cases where this has been at issue, we demanded due process for our members and management tried to deny that due process notwithstanding the constitution and Personnel Regulations Section 3.2 *Due Process*. Management can submit a proposal to bargain, but hasn't. To say that "effects bargaining" is at the root of all evil is disingenuous at best. (Even management touts the low number of complaints relative to the amount of police activity.)

I further note that it has been those areas where the LEOBR or an unfettered management right applies that have been the subject of most criticism. The Department of Justice was falsely told by police management that FOP Lodge 35 delayed the disciplinary process and Lodge 35 provided proof that it did not. DoJ found many management, not FOP, deficiencies and the recently signed Agreement with DoJ preserved all contract and PLRA rights while requiring changes in certain management (not FOP) practices.

In sum, this issue has been exploited and misunderstood. Most collective bargaining involves mandatory subjects of bargaining, not "effects." "Effects bargaining" exists even when a statute does not create it, for there is no bright line test to determine if a matter is a mandatory subject of bargaining or an effect of the exercise of a management right.

Honorable Derick Berlage
Bill 10-00
June 2, 2000

Page Eight

Our law, unlike the other County bargaining laws, sets forth by statute what others have had to define through litigation. Our job as police officers is a tough one. The public is better served when we negotiate according to statute than when we litigate over it.

Our goal is to avoid continuing controversy, not to create it. We therefore urge Council to include sergeants in the bargaining unit under the law that has existed for 18 years.

We look forward to working with you, the MFP Committee, and full Council on this most important legislation.

Sincerely,



Walter E. Bader
President

Enclosures (Reference material; MCGEO ULP Case 90-1)

cc: Mr. Andrews, Lead, MFP
Mrs. Dacek
Mr. Denis
Mr. Ewing
Mr. Leggett
Mrs. Praisner, Chair, MFP Committee
Mr. Silverman
Mr. Subin, President

Bill No. 10-00
Concerning: Collective Bargaining -
Police - Sergeants
Revised: 6-2-00 Draft No. 4
Introduced: March 14, 2000
Expires: September 14, 2001
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Berlage, Andrews, Leggett, Silverman, and Ewing

AN ACT to:

- (1) bring police sergeants within the scope of the existing police collective bargaining unit if a majority of sergeants elect to be represented;
- (2) ~~[[divide the]]~~ establish a second police collective bargaining unit ~~[[into two bargaining units]]~~ composed of captains and lieutenants; ~~[[and]]~~
- (3) limit the scope of collective bargaining for certain members of police bargaining units; and
- (4) generally amend the law regarding collective bargaining with County police officers.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resource
Sections 33-76, ~~[[and]]~~ 33-78, and 33-80

By adding

Chapter 33, Personnel and Human Resource
Section 33-78A

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 33-76, ~~[[and]]~~ 33-78, and 33-80 are amended, and Section

33-78A is added, as follows:

33-76. Definitions.

When used in this Article:

* * *

Certified representative means an employee organization selected in accordance with [the procedures of] this ~~[[Chapter]]~~ Article to represent [the] a unit.

Employee means any police officer [in the classification of] classified as a captain, lieutenant, sergeant, master police officer I, master police officer II, police officer I, police officer II, police officer III, [and] or police officer candidate, or an equivalent nonsupervisory classification[s], but not [those] a police officer in [the classification of police sergeant or] any [equivalent or] higher classification.

Employee does not include a captain or lieutenant whose primary duties involve human resources, internal affairs, legal matters, labor relations, or policy development and compliance.

Employer means the County Executive and [his] the Executive's designees.

* * *

Unit means [all employees] either of the bargaining units defined in Section 33-78A.

33-78. Employee rights.

* * *

- (b) The employer [shall have the duty to] must extend to the certified representative the exclusive right to represent the employees in that bargaining unit for the purposes of collective bargaining, including the orderly processing and settlement of grievances as agreed by the parties.
- (c) A certified representative [shall] must serve as the bargaining agent for all employees in the unit for which it is certified and [shall have the duty to] must represent fairly and without discrimination all employees in that unit without regard to whether the employees are [or are not] members of the employee organization, [or are paying] pay dues or other contributions to it, or [participating] participate in its affairs. [; provided, however, that it shall not be deemed] However, it is not a violation of this duty for a certified representative to seek enforcement of an agency shop provision in a valid collective bargaining agreement.

* * *

33-78A. Bargaining units.

For purposes of certification and collective bargaining, employees subject to this Article must be divided into 2 bargaining units, composed of the following employees:

- (1) [[sergeants]] captains and lieutenants;

(2) all other covered employees.

33-80. Collective Bargaining.

(a) **Duty to bargain; matters subject to bargaining.** [[Upon certification of an]] A certified employee organization[[, as provided in section 33-79,]] and the employer [[and the said certified representative shall have the duty, through their designees, to]] must bargain collectively [[with respect to those]] on the following subjects [[as follows]]:

* * *

(7) The effect on employees of the employer's exercise of rights [[enumerated]] listed in subsection (b) [[hereof]], but this paragraph does not apply to:

(A) the bargaining unit composed of captains and lieutenants;
and

(B) those sergeants who are members of a bargaining unit.

* * *

Sec. 2. Certification Process.

If the permanent umpire appointed under Section 33-77 finds, not later than October 31, 2000, that a majority of all sergeants employed by the Police Department on September 1, 2000, have voted, in an election held as provided in Section 33-79(b)-(d), to authorize the certified representative of the police bargaining unit to represent them, then those provisions of Sections 33-76 and 33-80, as amended by Section 1 of this Act, which expressly apply to police sergeants, take effect on November 1, 2000. A petition is not necessary for the election to be held under this provision, and Section 33-79(b)(2) does not apply to this election. If the permanent umpire does not so find, then those provisions of Sections 33-76 and 33-80 do not take effect.

67 **Sec. 3. Applicability.** This Act does not affect any collective bargaining
 68 agreement in effect on October 1, 2000. Any change to an existing bargaining unit
 69 takes effect, for purposes of applying and administering a collective bargaining
 70 agreement, on July 1, 2001.

71 *Approved:*

72

Michael L. Subin, President, County Council

Date

73 *Approved:*

74

Douglas M. Duncan, County Executive

Date

75 *This is a correct copy of Council action.*

76

Mary A. Edgar, CMC, Clerk of the Council

Date

